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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,752

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EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

3751

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,752	<b>Applicant(s)</b> BULTMANN ET AL.	
	<b>Examiner</b> JASON K. NIESZ	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-14, 16, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 15, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/09/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 05/09/2006 was considered by the examiner.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 13, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the fuel tank filler neck" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "a longitudinal extent of the fuel tank filler neck". It is unclear what this limitation means.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-6, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Garms (US Patent 4,911,203).

In Re claim 1 with reference to Figures 1-4 Garms discloses a sealing device for a tank access opening comprising a ball (42), displaceably supported inside a tank access opening in such a way that on introduction of a fuel nozzle the ball opens the access opening.

In Re claim 4 with reference to Figures 1-4 Garms discloses a sealing ring (44).

In Re claim 5 with reference to Figure 4 Garms discloses a ball (42) which is larger than a tank access opening (54).

In Re claims 6, 11 and 14 Garms discloses a compression spring (46).

7. Claims 1, 3-6, 9-11, 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipate by Harris (US Patent 5,056,570).

In Re claim 1 with reference to Figures 13 and 14 Harris discloses a sealing device for a fuel tank filler neck comprising a ball (238) displaceably supported in the tank access opening (232).

In Re claims 3 and 13 Harris discloses a sleeve (the rubber sleeve surrounding spring 250) having a recess on an underside (the opening below the ball).

In Re claim 4 Harris discloses a sealing ring (248).

In Re claim 5 Harris discloses a ball which is larger than a tank access opening (232).

In Re claims 6, 11 and 14 Harris discloses a compression spring (250).

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In Re claims 9 and 10 Harris discloses a module (the entire insert) which can be fixed to a fuel tank filler neck in a motor vehicle.

In Re claim 16 Harris discloses a slide (256).

8. Claims 1, 4-6, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Kroll (DE 4239572).

In Re claim 1 with reference to Figures 1-3 Kroll discloses a sealing device for a tank access opening comprising a ball (1) displaceably supported in the tank access opening (4).

In Re claim 4 with Kroll discloses a sealing ring (4).

In Re claim 5 Kroll discloses a ball which is smaller than a tank access opening (the opening in sealing ring 4).

In Re claims 6, 11 and 14 Kroll discloses a compression spring (2).

In re claim 12 Kroll discloses a guide (15).

9. Claims 1, 3, 5 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill (US Patent 4,840,206).

In Re claim 1 with reference to Figure 12 Hill discloses a sealing device comprising a ball (416) displaceably positioned in a tank access opening (420) and allowing access to said opening upon introduction of a nozzle (Figure 11b).

In Re claims 3 and 13 Hill discloses a sleeve (the passage formed by sidewalls and plug 450) having a recess in the bottom (405).

In Re claim 5 Hill discloses a ball (416) which is smaller than an access opening (420).

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In Re claims 6, 11 and 14 Hill discloses a compression spring (414).

In Re claim 12 Hill discloses a guideway (the passage formed by sidewalls and plug 450).

10. Claims 1, 4-6, 9-11, 14 and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Gerdes (DE 20309799). Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

In Re claim 1 Gerdes discloses a sealing device for a tank access opening comprising a ball (5) displaceably positioned at the access opening.

In Re claim 4 Gerdes discloses a sealing ring (the black circles at the access opening).

In Re claim 5 Gerdes discloses a ball (5) which is larger than a tank access opening.

In Re claims 6, 11 and 14 Gerdes discloses a compression spring (4).

In Re claims 9 and 10 Gerdes discloses a module (3) which can be fixed to a filler tank fuel neck (8) of a motor vehicle.

In Re claim 16 Gerdes discloses a slide (the seat which propels the ball).

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdes in view of Kroll. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

In Re claims 2 and 12 Gerdes as applied to claim 1 above discloses all the limitations, but doesn't disclose a guideway. Gerdes does disclose a sealing ball which moves at an acute angle to a tank access opening.

With reference to Figure 1 Kroll discloses a sealing ball (1) which is held in position by a guideway (15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Gerdes apparatus by adding the guideway of Kroll, in order to prevent the sealing ball from being displaced from its slide.

#### ***Allowable Subject Matter***

13. Claims 7, 8, 15, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 19 and 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz  
Examiner  
Art Unit 3751

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751